

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re R.G., a Person Coming Under the Juvenile  
Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

R.G.,

Defendant and Appellant.

F062049

(Super. Ct. No. JW103372-04)

**OPINION**

APPEAL from an order of the Superior Court of Kern County. John S. Somers,  
Judge.

Timothy E. Warriner, under appointment by the Court of Appeal, for Defendant  
and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney  
General, Michael P. Farrell, Assistant Attorney General, Michael A. Canzoneri and  
Sean M. McCoy, Deputy Attorneys General, for Plaintiff and Respondent.

-ooOoo-

A statute that took effect after R.G.'s commitment to the California Youth  
Authority (CYA) no longer permits the commitment of a person with his record to the

**SEE DISSENTING OPINION**

Department of Juvenile Facilities (DJF), the successor to the CYA. On that ground, R.G. argues that the court's order committing him to the DJF for an additional two years after the effective date of the new statute cannot stand. We agree.

### **BACKGROUND**

On March 24, 2004, a juvenile wardship petition alleged R.G.'s commission of assault by means of force likely to produce great bodily injury (count 1; Pen. Code, § 245, subd. (a)(1)) and resisting an officer (count 2; Pen. Code, § 148, subd. (a)(1)). (Welf. & Inst. Code, § 602, subd. (a).)<sup>1</sup> On the next day, he was detained on the petition. On April 29, 2004, pursuant to a negotiated disposition, he admitted count 2 and a new count 3 of battery causing serious bodily injury (count 3; Pen. Code, § 243, subd. (d).) On May 12, 2004, the juvenile court entered a disposition order declaring him a ward of the court and placing him in the home of his parents on specified conditions.

On July 30, 2004, a juvenile wardship petition alleged R.G.'s commission of assault with a deadly weapon (count 1; Pen. Code, § 245, subd. (a)(1)), residential burglary (count 2; Pen. Code, §§ 459, 460), and violating a previous juvenile court order (count 3; § 777, subd. (a)(2)). On August 2, 2004, he was detained on the petition. On August 17, 2004, pursuant to a negotiated disposition, he admitted counts 1 and 3. On August 31, 2004, the juvenile court entered a disposition order continuing his status as a ward of the court, removing him from the home of his parents, and placing him in Camp Erwin Owen for a maximum period of confinement of five years and four months.

On December 28, 2004, the probation officer filed a notice of R.G.'s violation of a previous juvenile court order. (§ 777, subd. (a)(2).) On January 12, 2005, he admitted the violation. On that date, the juvenile court entered a disposition order finding that previous juvenile court orders were not effective in his rehabilitation and committing him

---

<sup>1</sup> Later statutory references are to the Welfare and Institutions Code except where otherwise noted.

to the Kern Crossroads Facility, on completion of which he was to be released to the custody of his mother.

On January 30, 2006, a juvenile wardship petition alleged R.G.'s possession of cocaine base for sale (count 1; Health & Saf. Code, § 11351.5), possession of cocaine base (count 2; Health & Saf. Code, § 11350, subd. (a)), resisting an officer (count 3; Pen. Code, § 148, subd. (a)(1)), and violating a previous juvenile court order (count 4; § 777, subd. (a)(2)). Counts 1 and 2 alleged his commission of the crimes for the benefit of a criminal street gang. (Pen. Code, § 186.22, subd. (b)(1).) On the next day, he was detained on the petition.

On February 21, 2006, a juvenile wardship petition alleged second degree robbery (count 1; Pen. Code, §§ 211, 212.5, subd. (c)), battery of an elder (count 2; Pen. Code, § 243.25), and violating a previous juvenile court order (count 3; § 777, subd. (a)(2)). On the next day, he was detained on the petition.

On March 20, 2006, pursuant to a negotiated disposition, R.G. admitted count 3 in the January 30 petition, count 3 in the February 21 petition, and a new count 3 of grand theft in the February 21 petition (count 3; Pen. Code, § 487, subd. (c)). On April 27, 2006, the juvenile court entered a disposition order finding previous juvenile court orders not effective in his rehabilitation and committing him to DJF for a maximum period of confinement of six years and four months.

On November 15, 2010, the district attorney filed a petition for an order that R.G. remain subject to confinement at DJF beyond the date on which his confinement time was to expire. (§ 1800.) On the next day, the court found probable cause on the face of the petition and set the matter for a probable cause hearing. (§ 1801.1, subd. (a).) At a hearing on November 29, 2010, the court found probable cause to believe his discharge would be physically dangerous to the public and ordered a jury trial. (§§ 1801.1, subd. (b), 1801.5.)

On February 4, 2011, a jury found R.G. physically dangerous to the public.  
(§ 1801.5) On that date, the court committed him to DJF for an additional two years.  
(§ 1802.)

## DISCUSSION

Section 733 denies the juvenile court statutory authority to commit a ward to the DJF if “the most recent offense alleged in any petition and admitted or found to be true by the court is *not* described in subdivision (b) of Section 707.”<sup>2</sup> (§ 733(c),<sup>3</sup> italics added.) Though acknowledging the plain language of the statute, the Attorney General counters that “nothing in the plain language of section 1800[<sup>4</sup>] suggests that application of that section is limited by section 733.”

The issue arose at the end of the prosecution’s case at trial when R.G.’s attorney moved to dismiss. “[R.G.] cannot be committed to the [DJF],” he argued, as “[h]is most

---

<sup>2</sup> The parties do not dispute that grand theft (Pen. Code, § 487, subd. (c)), an offense “not described in subdivision (b) of section 707” (hereinafter 707(b)), is the “most recent offense alleged in any petition and admitted” by R.G. (§ 733, subd. (c), hereinafter 733(c).)

<sup>3</sup> “A ward of the juvenile court who meets any condition described below shall not be committed to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities: [¶] ... [¶] (c) The ward has been or is adjudged a ward of the court pursuant to Section 602, and *the most recent offense alleged in any petition and admitted or found to be true by the court is not described in subdivision (b) of Section 707*, unless the offense is a sex offense set forth in subdivision (c) of Section 290.008 of the Penal Code. This subdivision shall be effective on and after September 1, 2007.” (§ 733(c), italics added.)

<sup>4</sup> In part, section 1800, subdivision (a) reads: “Whenever the Division of Juvenile Facilities determines that the discharge of a person from the control of the division at the time required by Section 1766, 1769, 1770, 1770.1, or 1771, as applicable, would be physically dangerous to the public because of the person's mental or physical deficiency, disorder, or abnormality that causes the person to have serious difficulty controlling his or her dangerous behavior, the division, through its Chief Deputy Secretary for Juvenile Justice, shall request the prosecuting attorney to petition the committing court for an order directing that the person remain subject to the control of the division beyond that time.”

recent commitment offense was not an offense identified in Section 707(b) [ ]. According to Section 731(a)(4) [ ], only wards who committed an offense as outlined in 707(b) may be committed to the [DJF].” On the ground that his “most recent commitment offense” was Penal Code Section 487,” an offense *not* listed in section 707, subdivision (b), “he does not qualify as one who could be committed to the [DJF],” his attorney concluded. On the rationale that if his initial commitment was valid, so, too, was a two-year extension, the court denied the motion.

Not long after the briefing here was complete, the California Supreme Court answered in the negative an analogous question. “May a court commit to the [DJF] a juvenile who has not committed an offense described in subdivision (b) of [ ] section 707?” (*In re C.H.* (2011) 53 Cal.4th 94, 97 (*C.H.*)). “Two statutes govern the answer,” the court wrote. “[ ] [S]ection 731 authorizes a juvenile court to commit a juvenile who has been adjudged a ward of the court to the DJF if the ward has committed an offense described in subdivision (b) of [ ] Section 707 ‘and’ the ward ‘is not otherwise ineligible for commitment to the division under [ ] Section 733. ([ ] § 731(a)(4).)’”<sup>5</sup> (*Ibid.*, fn. omitted.) “Section 733 makes a ward ineligible for commitment to the DJF when ‘*the most recent offense* alleged in any petition and admitted or found to be true by the court is *not* described in subdivision (b) of Section 707, *unless the offense is a sex offense* set forth in subdivision (c) of Section 290.008 of the Penal Code.’ ([ ] § 733(c)), italics [in original].)” (*Ibid.*)

---

<sup>5</sup> (a) If a minor is adjudged a ward of the court on the ground that he or she is a person described by Section 602, the court ... may do any of the following: [¶] ... [¶] (4) Commit the ward to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, *if the ward has committed an offense described in subdivision (b) of Section 707* and is not otherwise ineligible for commitment to the division under Section 733.” (§ 731(a)(4), italics added.)

In *C.H.*, the juvenile court committed a ward of the court to the DJF on the basis of his commission of a sex offense listed in Penal Code section 290.008, subdivision (c), even though he had never committed an offense listed in section 707(b). (*C.H.*, *supra*, 53 Cal.4th at p. 97.) Invalidating the commitment, the Supreme Court held that “a juvenile court lacks authority to commit a ward to the DJF under section 731(a)(4) if that ward has never been adjudged to have committed an offense described in section 707(b), even if his or her most recent offense alleged in a petition and admitted or found true by the juvenile court is a sex offense set forth in Penal Code section 290.008(c) as referenced in section 733(c).” (*C.H.*, *supra*, 53 Cal.4th at pp. 97-98.) By parity of reasoning, *C.H.* persuades us that the juvenile court lacks authority to commit R.G. to the DJF under section 1800 since his most recent offense alleged in a petition and admitted or found true by the juvenile court was not an offense described in section 707(b).

#### **DISPOSITION**

The order is reversed.

---

Gomes, J.

I CONCUR:

---

Levy, Acting P.J.

DAWSON, J.

I dissent. The majority holds that Welfare and Institutions Code section 1800<sup>1</sup> cannot apply to R.G. because his commitment offense is no longer eligible for Department of Juvenile Facilities (DJF) disposition. The conclusion is based on parity of reasoning with the Supreme Court's recent opinion in *In re C.H.* (2011) 53 Cal.4th 94. But *In re C.H.* does not address the retroactive application of legislative changes made to sections 731 and 733, by which changes R.G.'s commitment offense became ineligible for DJF disposition.<sup>2</sup> The Legislature has addressed the retroactive application of the changes made to sections 731 and 733, by which R.G.'s offense became nonqualifying, in section 731.1 (where minor's offense no longer qualifies, court may recall previous commitment "upon the recommendation of the chief probation officer" and thereafter shall "convene a recall disposition hearing for the purpose of ordering an alternative disposition"), and in section 1766, subdivision (c) (for those wards whose commitment offense no longer qualifies for DJF commitment, parole supervision shall be by the county of commitment).

---

<sup>1</sup> All statutory references are to the Welfare and Institutions Code, unless otherwise stated.

<sup>2</sup> We rejected retroactive application of the changes to sections 731 and 733 in *In re N.D.* (2008) 167 Cal.App.4th 885.

In my view, had the Legislature intended that section 1800 be subject to the new limitations on DJF-qualifying offenses, it would have said so, as it did in sections 731.1 and 1766, subdivision (c). Without contrary direction from the Legislature, we must apply the normal rule that new legislation operates prospectively only. (*In re N.D.*, *supra*, 167 Cal.App.4th at p. 892.)<sup>3</sup>

---

DAWSON, J.

---

<sup>3</sup> In response to the decision in *In re C.H.*, the Legislature, effective February 29, 2012, has again amended sections 731 and 733. (Stats. 2012, ch. 7, §§ 1, 2.) Under the new amendments, R.G.'s commitment offense again qualifies for DJF disposition.